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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE STATE OF COLORADO,

Petitioner,

v.

FRANCIS BARRY CONNELLY,

Respondent.

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE LEGAL FOUNDATION OF AMERICA IN SUPPORT OF THE PETITIONER

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Nathan B. Coats, Esq., Counsel for Petitioner, and Abelardo P. Bernal, Esq., Counsel for Respondent. Letters of Consent of both parties have been filed with the Clerk of this Court.

INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over sixty times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The Legal Foundation of America (LFA) is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

Amici's specific interest in this case arises from our concern that this Court's approval of the decision of the Supreme Court of Colorado would place an intolerable burden upon the police

to ascertain the mental condition of a suspect prior to interrogation. It would, in effect, cloak suspects with an absolute immunity from the consequences of their confessions that are motivated by feelings of guilt or pangs of conscience, and the ruling of the court below would apply even in those situations where the police have not interrogated a suspect.

STATEMENT

Briefly, the facts in this case show that the defendant simply walked up to a uniformed patrol officer on a downtown street in Denver, Colorado, and spontaneously confessed to killing a 14-year-old girl four months earlier. Defendant corroborated his confession by directing police to supporting evidence, and he confessed a second time after being advised of, and waiving his *Miranda* rights.

The Colorado Supreme Court unequivocally acknowledged that the initial confession was not coerced, elicited, or solicited in any way by the police officer or any other representatives of the State of Colorado, finding specifically that it "was neither solicited by the officer nor was the result of any form of police action." *People v. Connelly*, 702 P.2d 722, 729 (1985).

The record indicates that defendant was convinced by a direction from God—which could be but another way of indicating extreme pangs of conscience—that he should confess his crime. Although he was apparently competent to stand trial, a psychiatrist testified at a suppression hearing that defendant was a paranoid schizophrenic and had auditory hallucinations at or before the time he confessed.

The Supreme Court of Colorado ruled that the defendant's mental condition sufficed in itself to render his initial confession involuntary—despite the lack of any state involvement what-

soever in the confession. To admit such a confession, the court ruled, would violate the Due Process Clause of the Fourteenth Amendment. 702 P.2d at 729. Defendant's waiver of his *Miranda* rights was likewise rendered ineffective due to his mental condition, making his subsequent confession also inadmissible. *Id.* The court also expressed the view that the use of derivative evidence might be precluded in this case, 702 P.2d at 730, but *amici* do not address this issue in this brief, other than to note in passing that such view is clearly wrong in light of prior pronouncements of this Court in *Michigan v. Tucker*, 404 U.S. 443 (1972) and *Harris v. New York*, 401 U.S. 222 (1971).

SUMMARY OF ARGUMENT

The summary of argument has already been submitted in the "argument" section of the Table of Contents and *amici's* statement of interest.

ARGUMENT

THE DUE PROCESS CLAUSE DOES NOT COMPEL SUPPRESSION OF CONFESSION BY DEFENDANT WHO, HAVING BEEN TREATED FOR MENTAL PROBLEMS, WALKED UP TO STREET PATROL OFFICER AND CONFESSED TO UNSOLVED KILLING OF YOUNG GIRL, SAID THAT GOD HAD TOLD HIM TO CONFESS, AND THEREAFTER DIRECTED POLICE TO EVIDENCE CORROBORATING CONFESSION; NOR DID DEFENDANT'S MENTAL CONDITION RENDER HIS WAIVER OF *MIRANDA* RIGHTS INEFFECTIVE.

Americans for Effective Law Enforcement has been privileged to file many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *National District Attorneys Association, the International Association of Chiefs of Police*, various other associations of chiefs of police and sheriffs, and the *Legal Foundation of America*. Those briefs have often presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, we will not undertake an extended analysis of the case law, but will confine our brief essentially to the law enforcement impact of the issues raised by the parties.

We must, however, comment briefly on the three key cases relied upon by the court below in reaching its decision on the due process issue—*Townsend v. Sain*, 372 U.S. 293 (1963), *Culombe v. Connecticut*, 367 U.S. 568 (1961), and *Blackburn v. Alabama*, 361 U.S. 199 (1960).

Not one of these decisions of this Court stands for the proposition asserted by the court below, and *amici* respectfully request this Court to make a clear declaration to that effect for the benefit of prosecutors and police alike.

Townsend simply declared the due process voluntariness standard—a confession must be "the product of a rational intellect and a free will," but it *applied* the standard to a confession *obtained by the police*, not the sort of volunteered, spontaneous statement made by the defendant initially in this case. The Court in *Townsend* stated:

> These standards are applicable whether a confession is the product of physical intimidation or psychological pressure and, of course, are equally applicable to a drug-induced statement. . . . *Any questioning by police officers* which *in fact* produces a confession which is not the product of a free intellect renders that confession inadmissible (emphasis added).

372 U.S. at 307.

The same is true of *Culombe*. The defendant in that case, having the mental age of a 9-year-old person, was subjected to a grueling *police interrogation* that ranged over a four day period before he confessed. And the same is true of *Blackburn*. There a psychotic was *interrogated* for eight or nine hours by a battery of up to three police officers while being confined in a "tiny room." The Court ruled: "[T]he Fourteenth Amendment is grievously breached when an involuntary confession is obtained by *state officers* and introduced into evidence in a criminal prosecution that culminates in a conviction." (emphasis added). 361 U.S. at 205.

The court below clearly misapplied these cases, despite the fact that Justice Erickson, in his vigorous dissent, called attention to the misapplication. (702 P.2d at 731.) He very aptly pointed out that the defendant's motivation for confessing "was not tied to police questioning or external pressures of any kind," and that the defendant's "own psychological makeup" accounted for the "internal voices" that allegedly compelled his confession. Justice Erickson stated that although the defendant's mental condition could be considered "to attack the credibility of his confession or to establish nonresponsibility,"

his mental illness "should not preclude a finding that his statement was voluntary for purposes of the Fifth Amendment." *Id.*

A factor the Colorado court overlooked is that the principal basis for the voluntariness test of confession admissibility is the protection against the use as evidence of externally coerced, false confessions. See Inbau, Reid, and Buckley, Criminal Interrogation and Confessions, 3d ed. 1986, at pp. 246-247. In the instant case there was no coercion by anyone; moreover, the confession was clearly established to be valid and trustworthy.

The decision below not only misapplies the due process standard articulated by this Court in prior cases but it also defies all common sense, a fact that has not escaped news media attention. As noted by Vincent Carroll, assistant editorial page editor, writing for the *Rocky Mountain News* in his column, July 11, 1985, p. 71:

> Are police in Colorado now required, in addition to reading a suspect his rights, to assess the person's mental condition and refuse to investigate leads if they conclude he is unbalanced or schizophrenic?
>
> If so, why not suppress all unsolicited admissions of guilt? Isn't a conscience merely the mix of values, empathy, instinct and — yes — religious belief that compel a person to act in a socially acceptable fashion, even if it goes against his short-term interest? How is the confession of *any* guilt-stricken person entirely voluntary, in the sense that it's free of compulsion?

And as noted on the editorial page of the same newspaper of August 18, 1985, p. 80:

> It's bad enough that some offenders already escape lengthy incarceration through insanity pleas. At least, however, they're put away in mental hospitals after a trial. This case adds an ugly twist to defense lawyers' options: As Deputy District Attorney Gilberto Espinoza says, "If this (ruling) stands, we may never be able to use any confession if an individual said he felt a compulsion to confess for whatever reason."

Amici submit that the case below demonstrates the need for a bright line statement from this Court that the due process standard for voluntariness applies to *state action*, or to the conduct of *third parties* (as in the case of a confession coerced by a private security guard, for example), not the results of mental delusions or pangs of conscience demonstrated by a defendant such as the one in the instant case.

The potential problem the Colorado court creates for prosecutors is a substantial one. Assume, for instance, that a defendant has been found competent to stand trial, and also assume a determination has been made that he was sane at the time he committed the act. Then further assume that there was psychiatric testimony to the effect that his confession resulted from "paranoid schizophrenia," or from "command auditory hallucinations," or from some other mental illness. If the psychiatric appraisal of his confession is accorded the weight that was given in the instant case, by a reviewing court, this would mean that in at least some cases a defendant will have been fully immunized from the consequences of his act and his damning confession. Absent independent evidence of his guilt, there could be no legal conclusion to that effect. Neither the traditional standard of voluntariness developed by this Court over many decades, nor the purpose of the prophylactic rule adopted by this Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), for the protection of the Fifth Amendment privilege against self-incrimination, requires so manifestly untenable a result as this.

Amici submit that the police will not be able to sort out the "insane" from the "guilt ridden," even if they thought that was their responsibility, and prosecutors will in many cases be left with cases where the defendant cannot even be civilly committed in the absence of a finding of incompetency or an acquittal by reason of insanity. It is obviously advisable for this Court to issue another "bright line" rule—one that will deal

with the aberration represented by the decision of the court below—as the Court has done in recent years in Fourth Amendment cases where state and federal courts had strayed from constitutional mandates into a complexity of rules that were not only unworkable for police and prosecutors, but also baffling and discrediting to the criminal justice system as perceived by the public, and far removed from the intent of the Framers of the Constitution, e.g., *New York v. Belton*, 453 U.S. 454 (1981), and *United States v. Ross*, 456 U.S. 798 (1982). We submit that the instant case is an appropriate vehicle for this Court to continue that salutory process.

CONCLUSION

The Colorado Supreme Court decision now before this Court is not only in error in its misapplication of prior due process decisions of this Court, but it is also one of many hundreds that have been spawned by *Miranda*, as was recognized by this Court when it added the *Miranda* waiver issue to the questions to be considered on review. *Miranda* cases, in particular, have consumed enormous time, effort, and expenditure of funds that could have been put to far better use on matters of considerably greater importance within the judicial system.

Not only is it to the best public interest to reject the rules established below in this case, but we urge, additionally, that at the earliest opportunity this Court should re-examine the *Miranda* mandate as to the justification for its continued existence. (An expanded explanation for this recommendation is presented in Inbau, "Over-Reaction: The Mischief of *Miranda v. Arizona*," 73 J.C.L. Crim. 797-810 (1983), and particularly in the updated and revised version in 18 The Prosecutor, No. 4, 7 (1985)). We submit that in disposing of this case the Court should restate the due process voluntariness

standard, and also clarify the *Miranda* waiver standard; moreover, the Court should examine the rationale for continuation of the *Miranda* decision itself.

Respectfully submitted,

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